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R. DANIEL BOWEN
JEREMY P. PISCA ANDREW P. DOMAN
COMMISSIONERS

TITLES 29-30

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

| | |
|------------------------------|----------------------------------|
| Idaho R. Civ. P. | Idaho Rules of Civil Procedure |
| Idaho Evidence Rule | Idaho Rules of Evidence |
| Idaho R. Crim. P. | Idaho Criminal Rules |
| Idaho Misdemeanor Crim. Rule | Misdemeanor Criminal Rules |
| I.I.R. | Idaho Infraction Rules |
| I.J.R. | Idaho Juvenile Rules |
| I.C.A.R. | Idaho Court Administrative Rules |
| Idaho App. R. | Idaho Appellate Rules |

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

**ADJOURNMENT DATES OF SESSIONS OF
LEGISLATURE**

| Year | Adjournment Date |
|------------|------------------|
| 2014 | March 20, 2014 |

TITLE 30

CORPORATIONS

CHAPTER.

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3. IDAHO NONPROFIT CORPORATION ACT, § 30-3-20.

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16. CONTROL SHARE ACQUISITION ACT, § 30-1604.

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CHAPTER 1

GENERAL BUSINESS CORPORATIONS

PART 6. SHARES AND DISTRIBUTIONS

PART 13. APPRAISAL RIGHTS

SECTION.

30-1-630. Shareholders' preemptive rights.

SECTION.

30-1-1302. Right to appraisal.

PART 6. SHARES AND DISTRIBUTIONS

30-1-630. Shareholders' preemptive rights. — (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

(i) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(ii) Shares issued to satisfy conversion rights or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(iii) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;

(iv) Shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights

with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History.

I.C., § 30-1-630, as added by 1997, ch. 366,
§ 2, p. 1080; am. 2014, ch. 97, § 14, p. 265.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 97, corrected a
typographical error in paragraph (2)(a).

PART 13. APPRAISAL RIGHTS

30-1-1302. Right to appraisal. — (1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(a) Consummation of a merger to which the corporation is a party:

(i) If shareholder approval is required for the merger by section 30-1-1104, Idaho Code, and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(ii) If the corporation is a subsidiary and the merger is governed by section 30-1-1105, Idaho Code;

(b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(c) Consummation of a disposition of assets pursuant to section 30-1-1202, Idaho Code, if the shareholder is entitled to vote on the disposition;

(d) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or

(e) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.

(2) Notwithstanding subsection (1) of this section, the availability of

appraisal rights under subsection (1) (a), (b), (c) and (d) of this section shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which are:

(i) Listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the financial industry regulatory authority; or

(ii) Not so listed or designated, but have at least two thousand (2,000) shareholders and the outstanding shares of such class or series have a market value of at least twenty million dollars (\$20,000,000), exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares.

(b) The applicability of subsection (2)(a) of this section shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of, and vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders.

(c) Subsection (2)(a) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection (2)(a) of this section at the time the corporate action becomes effective.

(d) Subsection (2)(a) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section for the holders of any class or series of shares where:

(i) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

(A) Is, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of twenty percent (20%) or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one (1) year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(B) Directly or indirectly has, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or

election of twenty-five percent (25%) or more of the directors to the board of directors of the corporation; or

(ii) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(A) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or

(B) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 30-1-862, Idaho Code; or

(C) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one (1) of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of subsection (2)(d) of this section only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such

amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this part may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

- (a) Was not effectuated in accordance with the applicable provisions of part 10, 11 or 12 of this chapter or the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the corporate action; or
- (b) Was procured as a result of fraud or material misrepresentation.

History.

I.C., § 30-1-1302, as added by 1997, ch.

366, § 2, p. 1080; am. 2004, ch. 324, § 56, p. 907; am. 2014, ch. 97, § 15, p. 265.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 97, substituted "financial industry regulatory author-

ity" for "national association of securities dealers, inc." in paragraph (2)(a)(i).

CHAPTER 3

IDAHO NONPROFIT CORPORATION ACT

SECTION.

30-3-20. Organization of corporation.

30-3-20. Organization of corporation. — (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the incorporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state in accordance with section 30-3-46, Idaho Code.

History.

I.C., § 30-3-20, as added by 1993, ch. 220,
§ 2, p. 685; am. 2014, ch. 97, § 16, p. 265.

STATUTORY NOTES**Amendments.**

“section 30-3-46” for “section 30-3-75” in sub-
section (3).

The 2014 amendment, by ch. 97 substituted

CHAPTER 14**UNIFORM SECURITIES ACT (2004)****PART 1. GENERAL PROVISIONS****30-14-102. Definitions.****JUDICIAL DECISIONS**

Cited in: In re Tolman, 491 B.R. 138
(Bankr. D. Idaho 2013).

**PART 4. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER
REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS****30-14-403. Investment adviser registration requirement and ex-
emptions.****JUDICIAL DECISIONS**

Cited in: In re Tolman, 491 B.R. 138
(Bankr. D. Idaho 2013).

CHAPTER 16**CONTROL SHARE ACQUISITION ACT****SECTION.**

30-1604. Information statement.

30-1604. Information statement. — (1) An acquiring person shall deliver to the issuing public corporation at its principal executive office an information statement containing all the following:

(a) The identity of the acquiring person, including the identity of each member of any partnership, limited partnership, syndicate or other group constituting the acquiring person and the identity of each affiliate and associate of the acquiring person, including the identity of each affiliate and associate of each member of such partnership, syndicate or other group;

(b) A reference that the information is made under the provisions of this section;

(c) The number and class or series of shares of the issuing public

corporation beneficially owned, directly or indirectly, before the control share acquisition by each of the persons identified pursuant to paragraph (a) of this subsection;

(d) The number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control share acquisition by each of the persons identified pursuant to paragraph (a) of this subsection and specification of which of the following ranges of voting power in the election of directors that, except for the provisions of this chapter, the acquiring person in good faith believes resulted or would result from consummation of control share acquisition:

1. At least twenty percent (20%) but less than thirty-three and one-third percent (33 1/3%);
2. At least thirty-three and one-third percent (33 1/3%) but less than or equal to fifty percent (50%); or
3. Over fifty per cent (50%); and

(e) The terms of the control share acquisition or proposed control share acquisition, including the source of moneys or other consideration and the material terms of the financial arrangements for the control share acquisition, plans or proposals of the acquiring person, including plans or proposals under consideration to enter into a business combination or combinations involving the issuing public corporation, to liquidate or dissolve the issuing public corporation, to sell all or a substantial part of its assets or merge or consolidate it or exchange its shares with any other person, to change the location of its principal place of business or its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to change materially its charitable or community contributions or its policies, programs or practices relating thereto, to change materially its relationship with suppliers or customers or the communities in which it operates or to make any other material change in its business, corporate structure, management or personnel and such other objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the control share acquisition.

(2) If any material change occurs in the facts set forth in the information statement, including any material increase or decrease in the number of shares of the issuing public corporation acquired or proposed to be acquired by the persons identified pursuant to subsection (1)(a) of this section, the acquiring person shall promptly deliver to the issuing public corporation at its principal executive office an amendment to the information statement containing information relating to such material change. An increase or decrease or proposed increase or decrease equal, in the aggregate for all persons identified pursuant to subsection (1)(a) of this section, to one percent (1%) or more of the total number of outstanding shares of any class or series of the issuing public corporation is deemed material for purposes of this subsection. An increase or decrease or proposed increase or decrease of less than this amount may be material, depending on the facts and circumstances.

History.

I.C., § 30-1604, as added by 1988, ch. 84,
§ 2, p. 147; am. 2014, ch. 97, § 17, p. 265.

STATUTORY NOTES**Amendments.**

The 2014 amendment, by ch. 97, corrected

typographical errors and made minor stylistic
changes throughout the section.

CHAPTER 17**BUSINESS COMBINATION ACT****SECTION.**

30-1705. Requirements.

30-1705. Requirements. — Except as provided in sections 30-1703 and 30-1704, Idaho Code, and notwithstanding any other provisions to the contrary in this title, an issuing public corporation may not engage at any time in any business combination or vote, consent or otherwise act to authorize a subsidiary of the issuing public corporation to engage in any business combination with respect to, proposed by or on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with an interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder other than a business combination meeting all the requirements of this chapter, the articles of the issuing public corporation and the requirements specified in any of the following:

(1) A business combination approved by the board of the issuing public corporation before the interested shareholder's share acquisition date, or as to which the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date had been approved by the board of the issuing public corporation before the interested shareholder's share acquisition date.

(2) A business combination approved by the affirmative vote of the holders of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares entitled to vote not beneficially owned by the interested shareholder proposing the business combination or any affiliate or associate of the interested shareholder proposing the business combination at a meeting called for that purpose no earlier than three (3) years after the interested shareholder's share acquisition date.

(3) A business combination, with respect to which the consummation date is no earlier than three (3) years after the interested shareholder's share acquisition date, that meets all the following conditions:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of the issuing public corporation in the business combination is at least equal to the higher of the following:

1. The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested

shareholder, at a time when the interested shareholder was the beneficial owner, directly or indirectly, of five percent (5%) or more of the outstanding shares entitled to vote of the issuing public corporation, for any common shares of the same class or series acquired by it within the three (3) year period immediately before the announcement date with respect to the business combination or within the three (3) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States treasury obligations from time to time in effect less the aggregate amount of cash dividends paid, and the market value of any dividends paid other than in cash, per common share since the earliest date, up to the amount of the interest; and

2. The market value per common share on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher, plus interest compounded annually from that date through the consummation date at the rate for one (1) year United States treasury obligations from time to time in effect less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per common share since that date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the issuing public corporation in the business combination is at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of the class or series:

1. The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner, directly or indirectly, of five percent (5%) or more of the outstanding shares entitled to vote of the issuing public corporation, for any shares of the class or series acquired by it within the three (3) year period immediately before the announcement date with respect to the business combination or within the three (3) year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher, plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one (1) year United States treasury obligations from time to time in effect less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the class or series since such earliest date, up to the amount of the interest;

2. The highest preferential amount per share to which the holders of shares of the class or series are entitled in the event of any voluntary

liquidation, dissolution or winding up of the issuing public corporation, plus the aggregate amount of any unpaid dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of shares unless the aggregate amount of the dividends is included in the preferential amount; and

3. The market value per share of the class or series on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher, plus interest compounded annually from that date through the consummation date at the rate for one (1) year United States treasury obligations from time to time in effect less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the class or series since that date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the issuing public corporation in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of shares previously acquired by it and the consideration is distributed promptly.

(d) The holders of all outstanding shares of the issuing public corporation not beneficially owned by the interested shareholder immediately before the consummation date with respect to the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with paragraphs (a), (b) and (c) of this subsection.

(e) After the interested shareholder's share acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional shares entitled to vote of the issuing public corporation except:

1. As part of the transaction that resulted in the interested shareholder becoming an interested shareholder;
2. By virtue of proportionate share splits, share dividends or other distributions of shares in respect of shares not constituting a business combination;
3. Through a business combination meeting all of the conditions of section 30-1704, Idaho Code, and this subsection; and
4. Through purchase by the interested shareholder at any price that, if the price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of paragraphs (a), (b) and (c) of this subsection.

History.

I.C., § 30-1705, as added by 1988, ch. 84,
§ 3, p. 147; am. 2014, ch. 97, § 18, p. 265.

STATUTORY NOTES

Amendments. The 2014 amendment, by ch. 97, corrected typographical errors and made minor stylistic changes throughout the section.

